

**INTRODUCTION
AND CHAPTERS OF THE FLORIDA ADMINISTRATIVE CODE**

INTRODUCTION

A. HISTORY OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

South Florida's extremes of hurricane, flood and drought combined with efforts to populate this "new frontier" led the U.S. Congress in 1948 to launch the Central and Southern Florida Flood Control Project for purposes of flood control and water conservation. In 1949, the Florida legislature created the Central and Southern Florida Flood Control District (FCD) to act as the local sponsor for the project - operating and maintaining the water control network funded by property taxes levied within the District boundaries.

Throughout its history, this regional water resource agency evolved and grew in response to population growth and development. The Florida Water Resources Act of 1972, Chapter 373, Florida Statutes (F.S.), divided the state into five water management districts and greatly expanded the duties of the existing FCD. This included greater emphasis on water quality and environmental protection. The FCD was renamed the South Florida Water Management District in 1976, and new boundaries were drawn to encompass the region's primary watersheds.

The District has evolved into a multi-faceted agency responsible for most water resource issues - from providing flood protection and water supply protection to people living in cities and on farms, to restoring and managing natural ecosystems.

B. REGULATORY POWERS

The Water Resources Act, Chapter 373, F.S., governs the regulation of all "waters in the state" unless exempted by law. Waters in the state include all water on or beneath the surface of the ground or in the atmosphere.

The Act declares it to be the policy of the Legislature:

- (a) To provide for the management of water and related land resources;*
- (b) To promote the conservation, development, and proper utilization of surface and ground water;*
- (c) To develop and regulate dams, impoundments, reservoirs, and other works and to provide water storage for beneficial purposes;*
- (d) To prevent damage from floods, soil erosion, and excessive drainage;*
- (e) To minimize degradation of water resources caused by the discharge of stormwater;*
- (f) To preserve natural resources, fish, and wildlife;*
- (g) To promote the public policy set forth in s. 403.021, F.S.;*
- (h) To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and*
- (i) Otherwise to promote the health, safety, and general welfare of the people of this state.*

The Act provides for the establishment of permit programs for the regulation of consumptive use of water, well construction, surface water management systems, artificial recharge and utilization of works or land of the District.

Chapter 373, F.S., was significantly amended in 1993. Broadly stated, the Florida Environmental Reorganization Act of 1993 amended Chapter 373 by consolidating wetland resource, mangrove alteration, and surface water management permits into a single regulatory approval referred to as an "environmental resource permit" (ERP). Since the rules implementing this legislation became effective on October 3, 1995, a single permit issued by a single agency is required for development activities that, under the past regulatory structure, might have required separate permits from DEP and a water management district. This was accomplished by repealing most of the Warren S. Henderson Wetlands Protection Act in Part VIII of Chapter 403, F. S., while re-enacting and codifying its key provisions, with some amendments, in Part IV of Chapter 373, F. S.

Additionally, in October of 1995, the District began to process applications for the use of sovereign submerged lands when a proprietary authorization is required in conjunction with an ERP permit. In the interest of further streamlining the permitting process, this function was delegated to the water management districts by the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund. The proprietary authorization for the use of sovereign submerged lands is governed by Chapters 253 and 258, F.S., and the rules adopted thereunder.

The regulations which implement the District's permitting responsibilities are adopted by rule and codified at Title 40E of the Florida Administrative Code (F.A.C.).

C. THE GOVERNING BOARD

The District is governed by a nine-member board, appointed by the Governor, responsible for the overall administration of District programs, development of a water use plan, and implementation of the regulatory programs authorized by the various acts, which empower the District. Board members, who serve without compensation, are appointed from specific geographical areas within District boundaries.

The District is also divided into two basins (Big Cypress Basin and Okeechobee Basin), which are governed by basin boards. The primary functions of the basin boards are to plan and approve construction of primary water resource development projects and to plan secondary water control facilities for guidance of local government and private local owners.

D. PERMITTING OF SURFACE WATER MANAGEMENT SYSTEMS

1. Statutory Provisions (Part IV, Chapter 373, F.S.)

Generally, environmental resource permits are required by the water management districts for construction, alteration, operation, maintenance, repair and abandonment of surface water management systems. Surface water management systems are defined as a stormwater management system, dam, impoundment, reservoir, appurtenant work or works, or any combination thereof. The term "works" is defined in 373.403(5), F.S.: "'Works' means all artificial structures, including, but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state." The terms

"surface water management system" or "system" include areas of dredging or filling as defined by 373.403(13) and (14), F.S., respectively.

An applicant for an environmental resource permit must show that the proposed activities are consistent with the goals and policies expressed in 373.016 (Declaration and Policy) F.S., and 373.036 (State Water Use Plan) F.S.; that the construction or alteration of the surface water management system will not be harmful to the water resources of the District (373.413, F.S.); that the operation and maintenance of the system will not be inconsistent with the overall objectives of the District or harmful to the water resources of the District; and that additional criteria for activities in surface waters and wetlands are met (373.414, F.S.).

2. Uniform Rules of Procedure (Title 28, F.A.C.)

Chapters 28-101 through 28-110, F.A.C., describe how agencies, including water management districts, shall: schedule and conduct meetings, hearings, and workshops; file notices of protests and formal written protests; file and process petitions for declaratory statements; describe agency organization and operations; establish procedures for dealing with petitions and variances; conduct rulemaking; determine the substantial interests of a party; issue licenses (permits); and apply for exceptions from the Uniform Rules of Procedure.

3. Rules of the South Florida Water Management District (Title 40E, F.A.C.)

Chapter 40E-0 contains the Uniform Rules of Procedure exceptions which have been granted to the District. The exceptions apply to such matters as considering emergency petitions, processing and considering permit applications, employing District resources in an emergency, authorizing regulated activities in an emergency before a permit can be issued, defining point of entry into certain proceedings, and establishing exceptions and variances for activities which might require one or more District permits.

Chapter 40E-1 contains information about the South Florida Water Management District required by Subsection 120.53(1), F.S., such as general information about the District organization, records, and final orders; meetings, hearings, and workshops; the rulemaking process; declaratory statements; decisions determining substantial interests; permits; and compliance and enforcement. Since this document is contained in whole in this Manual, the description here of Chapter 40E-1 will be limited to Part VI, Permits.

Generally, an individual or general environmental resource permit must be obtained either prior to construction, alteration, operation, maintenance, repair, or abandonment of any surface water management system, dam, impoundment, reservoir, appurtenant work or works; or prior to the establishment and operation of a mitigation bank. Also, a conceptual environmental resource permit (which does not authorize construction or operation) may be obtained for proposed surface water management systems or mitigation banks.

Part VI contains detailed descriptions both of the processes by which various categories of permit applications are processed by the District, and the procedures for notifying interested persons and the public in general about the receipt by the District of certain permit applications and the agency's proposed actions on certain applications.

Section 40E-1.607, F.A.C., is a detailed list of permit application processing fees. In other sections, processes for denying, suspending, revoking, modifying, renewing, and transferring permits are described. Certain activities in the Florida Keys Area of Critical State Concern must be reviewed in special processes, which are listed. The various District forms, which relate to the permitting process are listed, as are the locations of District Service Centers at which the forms can be obtained.

Chapter 40E-4, F.A.C., describes the requirements for Individual Environmental Resource Permits for construction, alteration, or operation of surface water management systems. Chapter 40E-40, F.A.C., describes the requirements for Environmental Resource Standard General Permits, which are issued by District staff. (See 40E-4.021(18), F.A.C.) Generally, activities which either do not qualify for a no-notice and a noticed general environmental resource permit; and which involve activities in less than one acre of wetlands or other surface waters, on a project less than 100 acres in size and with less than ten boat slips; or which meet the criteria for incidental site activities; may qualify for an Environmental Resource Standard General Permit.

Projects which exceed the general permit thresholds require an individual permit. Individual permits are issued by the Governing Board upon application and compliance with Part IV of Chapter 373, F.S., and Title 40E, F.A.C. Documents which contain specific criteria for evaluating projects are listed in 40E-4.091, F.A.C. Further, additional criteria may be applicable if the project is to be located within an area in which the District has adopted basin rules. (See Chapter 40E-41, F.A.C., for additional criteria applicable in the Western C-9 Basin, the Kissimmee River Basin, and the C-51 Basin.)

Applications for incidental site activities are processed as described in Section 40E-40.042, F.A.C. All other standard general permits are subject to much the same rules and criteria as are in effect for individual permits. However, agency action shall be taken within 60 days after the application for a standard general permit is declared complete, and issuance occurs at the staff level.

Chapter 40E-400, F.A.C., describes activities for which general permits are issued by rule after notice to the agency ("Noticed General Environmental Resource Permits"). In order to obtain a noticed general permit, applicants file a short application form and certain basic plans and technical data. A "No Notice General Environmental Resource Permit" applies to small upland projects; certain types of roadway work; and some projects, which have received the approval of Miami-Dade County, Palm Beach County, or Collier County.

With one exception (described next), unless the District notifies the applicant within 30 days of application receipt that the proposed activities do not qualify for a noticed general permit, the activities may then proceed. Only in the case of those activities defined in Section 40E-400.475 General Permit for Minor Activities, F.A.C., is the District required to notify the applicant within 30 days of application receipt whether the proposed activities qualify for the general permit.

Modifications, suspensions, or revocations of noticed general permits occur in accordance with the provisions of Chapter 373, F.S., and Chapter 40E-400, F.A.C.

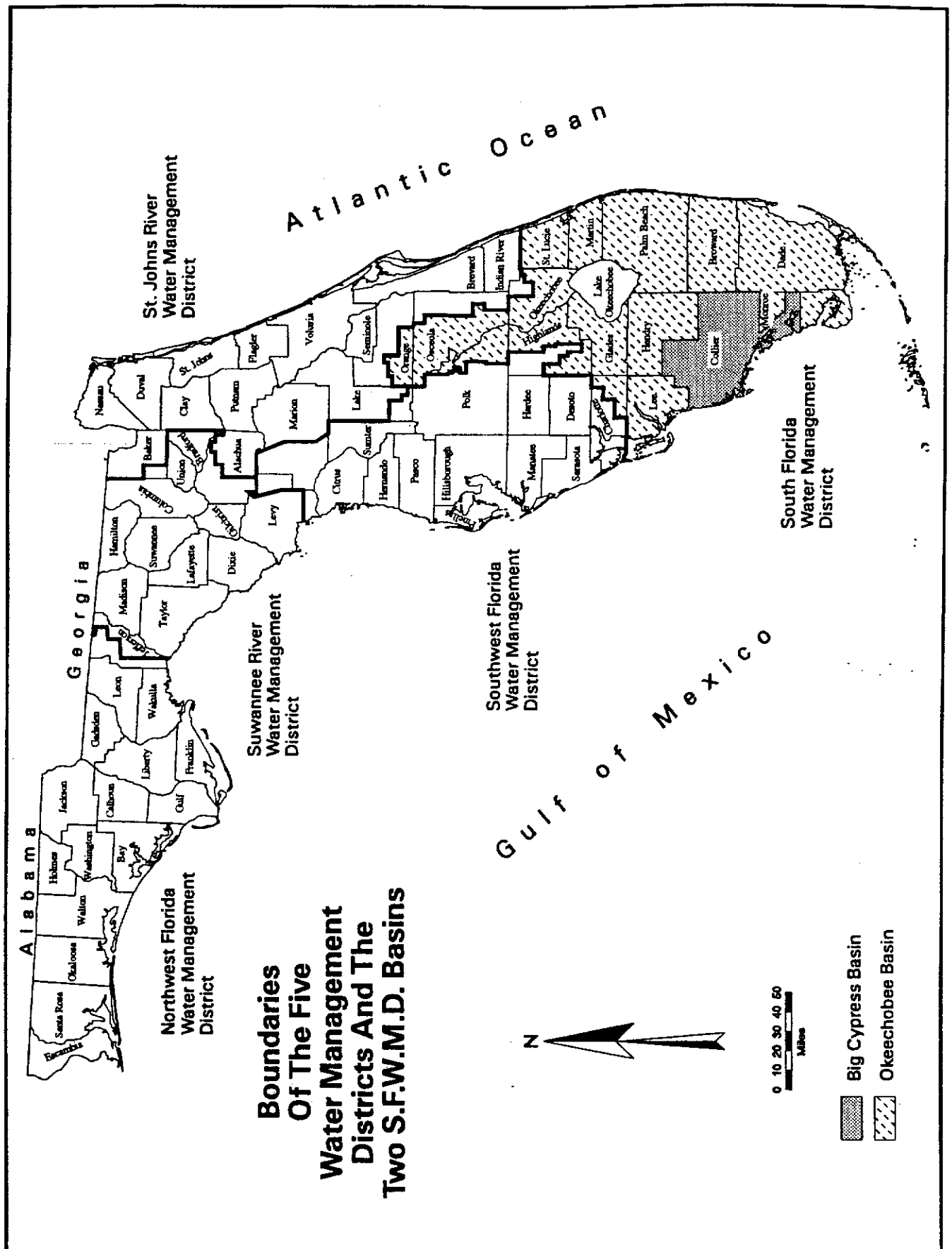


Figure 1-1

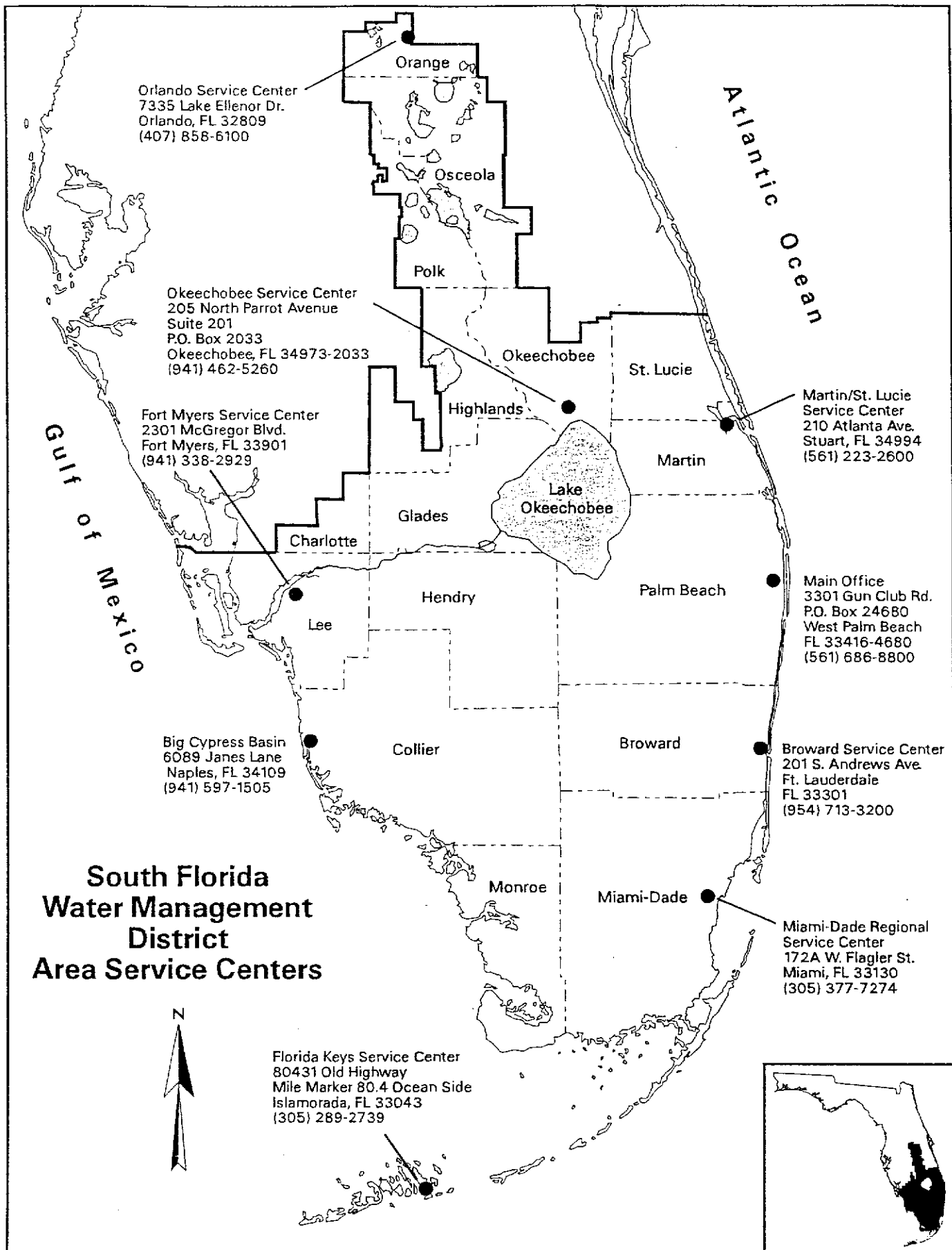


Figure 1-2

SUMMARY OF ENVIRONMENTAL RESOURCE PERMITS BY THRESHOLDS AND APPLICABLE LAWS

Chapter 40E-4, F.A.C. Environmental Resource Permits

Conceptual Approval Permit *	Individual Permit*
Phased developments Mitigation banks (optional)	Projects with: ≥ 100 acres project areas, or ≥ 10 boat slips, or ≥ 1 acre wetlands or surface water construction/alteration. Projects which do not qualify for general permits. Mitigation banks.

Chapter 40E-40, F.A.C. Environmental Resource Standard General** Permits

Standard General Permit	For incidental site activities on projects with:
Projects which do not qualify for a No-Notice or a Noticed General Environmental Resource Permit, and with: < 100 acres project area, and < 10 new boat slips, and < 1 acre wetlands/surface water impact.	Complete Environmental Resource Permit application, and preliminary staff recommendation of approval, and plans or description and location of proposed activities, and system must meet criteria and permit thresholds.

Chapter 40E-41, F.A.C. Surface Water Management Basin & Related Criteria

This chapter does not authorize any specific permits. However, these rules establish additional surface water management criteria for specified basins which insure that developments in the basins incorporate appropriate water quantity and water quality control measures to minimize adverse impacts to the water resources of the District. A formal delineation of the boundaries of each basin is included in the rule. The following basins are affected:

1. Western C-9 Basin
2. Kissimmee River Basin
3. C-51 Basin

* Individual permits – Agency action by the Governing Board

** General permits & authorizations – Issued by the District staff

Chapter 40E-400, F.A.C.
No-Notice and Noticed General Environmental Resource Permits**

General Environmental Resource Permits for those activities which have been determined to have minimal adverse impacts to the water resources of the District, both individually and cumulatively.

No-Notice General Permit	Noticed General Permit
Refer to Sections 400.315-400.316, F.A.C.	Refer to Sections 400.417-400.500, F.A.C.

Chapter 40E-4, F.A.C.
Formal Determinations of Wetlands and Other Surface Waters

Any person with a legal or equitable interest in real property may petition the District for a formal determination of the landward boundaries of wetlands and other surface waters.

- * Individual permits – Agency action by the Governing Board
- ** General permits & authorizations – Issued by the District staff